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## CONGRESSIONAL RECORD — SENATE

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tion, insofar as the protection of individual rights was concerned.

At any rate, the sixth amendment to the Constitution follows in practically the same wording. It provides that—

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed—

I wonder if the Senator knows of any basis upon which the Supreme Court or any other body or individual would have a right to rewrite the Constitution and state that at a certain point an accused person may have a jury trial but beyond that point he may not.

Mr. SMATHERS. I do not know of any legal basis. In many instances the Supreme Court has tried to rewrite the Constitution, unfortunately.

Mr. THURMOND. Is not article 3, section 2, of the Constitution, and is not the sixth amendment to the Constitution as clear as crystal? The Constitution states, "In all criminal prosecutions." Certainly, if a man is to be punished, if he can be put into jail for violating an order of the court, "criminal contempt" means contempt accompanied by a crime. The Constitution is clear in the language which states "in all criminal prosecutions." It makes no exceptions whatsoever.

Mr. SMATHERS. I agree with the Senator from South Carolina.

Mr. THURMOND. The idea of a split level jury trial, the kind of provision which was passed in 1957, does not accord with the Constitution. It was against that bill that I spoke for 24 hours and 18 minutes, and I was not speaking against Negroes. I was not speaking against any individual or his rights. I wish to see the rights of everyone protected. But the so-called civil rights bill which we are considering is the kind of bill which anyone ought to oppose, whether he is a white person or a Negro, whether he favors integration or segregation, if he believes in the Constitution of the United States.

Mr. SMATHERS. I totally agree with the Senator. There is a threat to the rights of all citizens, without respect to their race, color or creed. We are all threatened by the practice of allowing the courts to punish a man for contempt without a trial by jury. The day will come when citizens of every creed, every race, and every color will regret passage of the bill as much as those of us who are trying to defend those rights today will regret it if we do not stop passage.

Mr. THURMOND. I ask the distinguished Senator this question. Which race today commits the most crime, according to statistics compiled by the FBI and by other Government bureaus—the white race or the Negro race?

Mr. SMATHERS. I believe that statistically the percentage is higher among the Negro race.

Mr. THURMOND. So if people are to be punished without a trial by jury, which race would be most affected?

Mr. SMATHERS. I agree that there is more potential danger, in the particular provision about which we are speaking, to the people who customarily call

themselves members of minority groups, be they colored, religious, or whatever they are. There is much more threat and danger in the bill to them than there is to the majority of the people. Yet the bill is supposed to be a bill designed to protect the rights of the minority. On the other hand, I am satisfied—and I know that the Senator from South Carolina is also—that rather than protecting the rights of the minority, the bill threatens the rights of the minority. The members of minority groups have not yet seen it in operation. But if it is placed in operation, on that sad day they will rue the fact that they ever supported this bill.

Mr. THURMOND. I ask the distinguished Senator if title I of the bill would not deny the right of trial by jury and provide the same punishment for contempt as was provided in the 1957 Civil Rights Act?

Mr. SMATHERS. The Senator is correct.

Mr. THURMOND. I ask the Senator from Florida if title II of the bill, the so-called public accommodations provision, does not provide the same punishment as was provided in the 1957 Civil Rights Act, which states that a defendant has a right to a trial by jury under certain conditions?

Mr. SMATHERS. The Senator is correct.

Mr. THURMOND. I ask the distinguished Senator from Florida if title III of the bill, which pertains to public facilities, would not leave to the discretion of the court the punishment of a man without a trial by jury, if the court should see fit to punish him.

Mr. SMATHERS. The Senator is correct.

Mr. THURMOND. I ask the distinguished Senator from Florida if title IV of the bill, the title which pertains to education, would not leave to the discretion of the court the question of punishing a man without trial by jury.

Mr. SMATHERS. The Senator is correct.

Mr. THURMOND. I ask the distinguished Senator from Florida if title VII, the so-called fair employment practices section, would not leave to the discretion of the court the question of the punishment of a man without a trial by jury.

Mr. SMATHERS. The Senator is correct.

Mr. THURMOND. So in the bill there is title I, which would deny to a man the right of trial by jury. The bill contains title II, which would deny to a man the right of trial by jury. The bill contains title III, which would deny to a man the right of trial by jury. The bill contains title IV, which would deny to a man the right of trial by jury. The bill contains title VII, which would deny to a man the right of trial by jury.

Mr. SMATHERS. The Senator is correct.

Mr. THURMOND. The first two titles of the bill refer back to the punishment provided under the 1957 Civil Rights Act. If those two titles and the other three titles are retained, under which a man accused could be punished without the right of a trial by jury, would that not

set a precedent in the future if the Congress should see fit to go further in regard to the amount of the fine or the number of days set as other criteria?

Mr. SMATHERS. The Senator is correct. If we should give further sanction to what is obviously a bad principle, it could be extended to the point at which it would continue ever more to infringe upon the legal and constitutional rights of our citizens.

Mr. THURMOND. If a man can be denied the right of trial by jury, where imprisonment is limited to 45 days, 90 days, or 6 months, why could he not be denied that right if the punishment were a year's imprisonment?

Mr. SMATHERS. There is no question about that. In fact, I quoted a statement of Justice Goldberg that since 1957 there had been six contempt cases in which a man had been punished and sent to jail for more than a year. This may not seem to be a disturbingly large number of cases. However, Mr. President, Justice Goldberg went on to say that in all the past history of our Republic, until 1957, his research uncovered only two other cases in which the defendant in criminal contempt proceedings was sentenced to prison for a term exceeding 1 year.

Mr. THURMOND. If a man can be denied a right to a trial by jury if the maximum punishment should be a year, why could he not be denied that right if the punishment were for 3 years, 5 years, or 10 years? In other words, would not the proposed legislation establish a precedent under which, if the Congress should see fit to inject itself further into this field, it might go far out and provide such heavy punishment that the provision would practically cover any punishment a judge would ordinarily give in any case?

Mr. SMATHERS. It would obviously and effectively destroy the protections of trial by jury, supposedly given to all citizens in the Constitution.

Mr. THURMOND. Such action would directly, flagrantly, willfully and intentionally violate the Constitution of the United States, which provides that if a man is charged with a crime, he shall be entitled to a trial by jury.

Mr. SMATHERS. The Senator is correct.

Mr. THURMOND. I thank the able Senator and commend him for the fine argument he is making.

Mr. SMATHERS. I thank the Senator.

Mr. JAVITS. Mr. President, will the Senator yield before he leaves that point?

Mr. SMATHERS. I yield.

Mr. JAVITS. There is a point that I do not believe has been covered. It is very important, as it arises in these statements with respect to the commission of a crime and no jury trial is provided.

Section 3691 of title 18 of the United States Code provides that when the act which is alleged to be a contempt is at one and the same time a criminal offense under any act of Congress or under the laws of any State, the accused shall be entitled to a trial by jury, whether the bill is passed or not. In other words,

if incident to a contempt citation under an order issued under any title of the bill, we are dealing with any violation of any Federal or even a State law—let us say assault and battery—or if we are dealing even with a conspiracy to deprive a person of a civil right, which within the concept of the Screws case would come under sections 241 and 242 of title 18, United States Code—a person charged could ask for and receive a jury trial. I point that out because there have been general denunciations of the fact that a person, under the guise of being punished for contempt, would be punished for a crime without a jury trial. But there is now a law on the statute books which covers that situation.

Mr. SMATHERS. I thank the Senator.

Mr. President, I have been attempting to make my speech on the proposed jury trial amendment since approximately a quarter to 12. It is now 20 minutes after 3 o'clock. I again have one of those short speeches which I never seem to be able to conclude.

As the chair will recall, I had an 80-page speech which I tried to make with respect to the bill. I was never permitted to get beyond the 52d page, because Senators developed points in which they were interested, and in which I was interested. I believe the debate has been very useful in increasing knowledge with respect to the bill, but I still have not finished that speech.

However, the other night I was halted temporarily on the point of order that I had made three speeches and would not be permitted at the moment to make the fourth on the same subject.

I have yielded to the rules of the Senate with respect to the speeches on the main portion of the bill, but I would like to have it understood that I have not really finished this speech on trial by jury. I am not even half way through it. But I have been asked many questions, and because of my effort to respond to those questions, I still have much to say which I think might be of great value and great benefit to the Senate.

I should like to make a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. SMATHERS. If I yield the floor on this particular amendment, how many more speeches have I remaining on this amendment?

The ACTING PRESIDENT pro tempore. On the pending amendment, when the Senator concludes his speech, it will be counted as one speech.

Mr. SMATHERS. I will then be entitled to another speech to make on this amendment?

The ACTING PRESIDENT pro tempore. The Senator will be entitled to a second speech in the same legislative day.

Mr. HILL. Mr. President, I heartily congratulate the distinguished Senator from Florida on his exceptionally able speech. It is an excellent speech.

Mr. SMATHERS. I thank the Senator for his generosity. I do not believe I could say that about my own speech. But I appreciate having the Senator say so.

Mr. President, in concluding my remarks today, I express my very sincere hope that at the proper time the Senate will vote in favor of this amendment. I believe that we have already progressed too far down the wrong road with respect to permitting the judiciary to try individual citizens without benefit of a jury. I believe that if we follow this principle, we shall find that the punishment will be increased from 45 days, to 6 months, and then to a year; we shall find that the amount of the fine imposed will be increased.

We shall find that those who cherish their individual rights under the Constitution will see their rights eroded away unless this trial by jury amendment is adopted.

It is significant to me that if we look at the record throughout our history and throughout the history of Great Britain, from which we derived most of our law, those who believed most strongly in preserving the rights of individual citizens were uniform in their belief that trial by jury was a sacred privilege which should not be denied any person.

The U.S. Constitution declares, not once, but three times, the importance of trial by jury.

When we begin to let this privilege float away from us under the plea of convenience of the judiciary, when we begin to let loose its grasp because of the so-called rights, privileges, and pride of the court, I think it is a sad day in jurisprudence insofar as this Nation is concerned. It is a sad day for all those who wish to preserve their individual liberty.

Mr. HILL. Mr. President, will the Senator yield?

Mr. SMATHERS. I yield.

Mr. HILL. In other words, the Senator is saying that a fundamental American right guaranteed by the Constitution cannot be bartered or traded away, or denied on the basis of whether the punishment should be 45 days, 46 days, or some other length of time. Is that correct?

Mr. SMATHERS. The Senator is absolutely correct. It is not a matter that can be compromised. It is not a matter that can be traded. It is not a matter of convenience. That is what we are making of it. What is convenient for the court, what is accommodating for the court, or what helps the court is not what we are concerned about. What the founders of our Government were concerned about was not the pride of an individual judge, but the right, the liberty, and the protection of the individual citizen. That is why the provision was written into the Constitution, not once, but three times. And that is why all the writings since then have been so emphatic to the effect that in order to protect individual rights, we must preserve the right of trial by jury.

It is my sincere hope that the Senate, when given the opportunity to vote for the Talmadge-Ervin amendment, will wholeheartedly endorse and adopt it.

#### THE CUBAN PROBLEM

During the delivery of Mr. SMATHERS' speech,

Mr. HILL. Mr. President, in the Orlando Sentinel, published in Orlando,

Fla., last Wednesday, April 15, there was published an article entitled "SMATHERS Was Right, Expert Says." The article is written by Mr. Don Rider, a member of the Sentinel staff. The article states:

Florida's Senator GEORGE SMATHERS' advice on Cuba would have kept the United States out of the most serious foreign problem facing us today. Latin affairs expert Robert C. Hill said in Orlando yesterday.

"It is one of the tragedies of our time that they ignored him in Washington," the guest speaker for Rollins College Pan American Day luncheon, stated.

"If they had followed SMATHERS' advice on Cuba before he came to power there would be no Castro today. And I say that as a member of the other party. He was right."

I ask unanimous consent that the entire article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

#### SMATHERS WAS RIGHT, EXPERT SAYS

(By Don Rider)

Florida's Senator GEORGE SMATHERS' advice on Cuba would have kept the United States out of the most serious foreign problem facing us today, Latin affairs expert Robert C. Hill said in Orlando yesterday.

"It is one of the tragedies of our time that they ignored him in Washington," the guest speaker for Rollins College Pan American Day luncheon, stated.

"If they had followed SMATHERS' advice on Cuba before he came to power there would be no Castro today. And I say that as a member of the other party. He was right."

But Hill, Ambassador to Mexico during Eisenhower's administration, disagreed completely with another Democrat, "my old friend, Senator (J. W.) FULBRIGHT, the chairman of the Foreign Relations Committee."

Hitting at FULBRIGHT's Senate speech on March 25, Hill asserted, "Cuba is not a nuisance. It is the most serious foreign problem facing us today."

"We will never have stability in Latin America as long as Fidel Castro and his boys are at work."

About 500 attended the luncheon held at the Orlando Country Club. Rollins President Hugh F. McKean conferred on the speaker the George Morgan Ward medal for achievements in Latin American affairs.

#### THE ATLANTIC ALLIANCE AND U.S. SECURITY

Mr. JAVITS. Mr. President, yesterday morning the Republican Citizen Committee's Critical Issues Council, headed by Dr. Milton Eisenhower, issued the third in a series of papers on national issues of great importance entitled "The Atlantic Alliance and U.S. Security." Its first two papers, "Panama: A Realistic Appraisal" and "A Free and Prosperous Agriculture," issued during the past 3 weeks, already represent significant contributions to public debate.

The council's "critical issues paper" on the Atlantic Alliance is of tremendous importance to bipartisan foreign policy on NATO. At a news conference on the report, Gen. Lauris Norstad, former supreme Allied commander in Europe, chairman of the Atlantic Institute and head of the special task force responsible for this report, made certain additional remarks which are an important supplement to the council's paper.

I ask unanimous consent that the report along with its covering release may